



Department of Energy
Acquisition Regulation

No. 94-4

Date April 13, 1994

ACQUISITION LETTER

This Acquisition Letter is issued by the Procurement Executive pursuant to a delegation from the Secretary and under the authority of the Department of Energy Acquisition Regulation Subpart 901.301-70.

CONTENTS

CITATION

TITLE

915.805-5	Field pricing support
915.805-70	Audit as an aid in proposal analysis
915.807	Prenegotiation objectives
915.808	Price negotiation memorandum

- I. Purpose. The purpose of this Acquisition Letter is to provide greater flexibility to contracting officers.
- II. Background. The Department of Energy Acquisition Regulation contains documentation requirements concerning written prenegotiation plans, assistance from pricing support personnel, and securing preaward audits. These requirements address: (1) the assistance of pricing support personnel for contract actions exceeding \$500,000; (2) preaward audits for fixed price contract actions exceeding \$500,000 and cost reimbursement contract actions exceeding \$1,000,000; and (3) a specific format for prenegotiation memoranda for contract actions exceeding \$250,000.
- The Procurement Executive has recently determined to give greater flexibility to contracting officers in planning and documenting the negotiation of contract actions.
- III. Guidance. This Acquisition Letter transmits class deviations which have been granted increasing the thresholds for securing pricing support, contract audits, and written prenegotiation plans.

A. At subsection 915.805-5, Field pricing support, paragraph (a)(1), fourth and fifth sentences - The threshold for requesting pricing support is increased to \$5,000,000. Such support need not be requested if there is adequate data to support reasonableness of price. Support below that threshold may be requested when justified.

B. Subsection 915.805-70, Audit as an aid in proposal analysis, paragraph (d) - Contracting Officers should consider performance of an audit by the cognizant Federal audit activity prior to the negotiation of any contract or modification including modifications under

advertised contracts in excess of: (1) \$500,000 for a firm fixed-price contract or a fixed-price contract with economic price adjustment provisions; or (2) \$1,000,000 for all other contract types, including initial prices, estimated costs of cost-reimbursement contracts, interim and final price determinations, and target and settlement or incentive contracts.

C. Subsection 915.807, Prenegotiation objectives, third sentence - the threshold for preparation of prenegotiation plans following a prescribed format is increased to \$2,000,000,

D. Section 915.808, Price negotiation memorandum, paragraph (a), third sentence - The threshold for price negotiation memorandums divided into two major sections: Section I, the prenegotiation plan and Section II, the post-negotiation summary, is increased to apply to those actions in excess of \$2,000,000.

IV. Effective Date. This Acquisition Letter is effective on the date shown on page 1.

V. Expiration Date. This Acquisition Letter will expire on the effective date of a final rule published in the Federal Register implementing these or similar changes in the Department of Energy Acquisition Regulation, unless otherwise superseded.

FINDINGS AND DETERMINATION
CLASS DEVIATION TO
DEPARTMENT OF ENERGY ACQUISITION REGULATION

I. Findings

A. Department of Energy Acquisition Regulation 915.807, Prenegotiation Objectives, contains the following requirement:

"For those procurement actions of \$250,000 and above the contracting officer shall prepare a written prenegotiation plan which shall include prenegotiation objectives for price and other contract requirements, as appropriate."

B. Department of Energy Acquisition Regulation 915.808, Price negotiation memorandum, contains the following requirement:

"For acquisitions of \$250,000 and above, the price negotiation memorandum (PNM) shall be divided into two major sections: Section I, the prenegotiation plan and Section II, the post-negotiation summary."

B. There is no statutory basis for these requirements, nor for the dollar thresholds.

C. The underlying premiss of these requirements is that contracting officers are not sufficiently skilled in planning for negotiation of contracts and contract modifications, and that written documentation of the planning and the conclusions of each negotiation for contract actions in excess of \$250,000 is necessary to provide sufficient oversight by higher level management at the contracting activities, and by independent reviews, such as the Procurement Management Assistance Review.

D. Procurement Management Assistance Reviews in Fiscal Years 1992 and 1993 have rarely made any findings concerning documentation of planned negotiations or summaries of negotiations at the offices reviewed. Most reports have stated that such planning and documentation was properly performed by contracting officers.

II. Determination

A. Based upon the above findings, I hereby determine that contracting officers should be given greater authority to plan for negotiation of contract actions without formally documenting such planning in a written document, and heads of contracting activities should be given greater authority to determine documentation requirements for the procurement actions which they carry out. Such greater authority will reduce the number of actions requiring a written prenegotiation plan, yet will not denigrate the quality of negotiations and awards executed by DOE contracting officers.

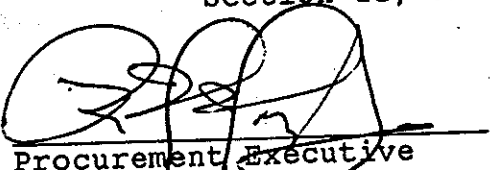
B. Therefore, in accordance with the authority vested in me by 48 CFR 901.404, Class deviations, I hereby grant a deviation, on a class basis, to the requirements of 48 CFR 915.807, Prenegotiation objectives, with respect to requiring contracting officers to prepare a written prenegotiation plan for those actions which exceed \$250,000. Further, I hereby grant a deviation, on a class basis, to the requirements of 48 CFR 808, Price negotiation memorandum, which requires the price negotiation memorandum, for acquisitions of \$250,000 and above, to be structured in accordance with the prescriptions of that subpart.

C. In lieu of these requirements from which the deviation is granted, 48 CFR 915.807, Prenegotiation objectives, shall be modified at the earliest practicable time to read as follows:

"For those procurement actions of \$2,000,000 and above the contracting officer shall prepare a written prenegotiation plan which shall include prenegotiation objectives for price and other requirements, as appropriate."

D. Further, 48 CFR 915.808 Price negotiation memorandum, shall be modified at the earliest practicable time to read as follows:

"For acquisitions of \$2,000,000 and above, the price negotiation memorandum (PNM) shall be divided into two major sections: Section I, the prenegotiation plan, and Section II, the post-negotiation summary"


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FINDINGS AND DETERMINATION
CLASS DEVIATION TO
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I. Findings

A. Department of Energy Acquisition Regulation 915.805-5, Field pricing support, contains the following requirement:

"The DOE contracting officer shall formally request the assistance of appropriate pricing support personnel, other than auditors, for the review of any proposal that exceeds \$500,000, unless the contracting officer has sufficient data to determine the reasonableness of the proposed cost or price."

B. There is no statutory basis for this requirement, nor for the dollar threshold.

C. The underlying premiss of this requirement is that contracting officers are not sufficiently skilled to perform cost and price analyses, and thus must seek the assistance of trained cost and price analysts in order to properly assess an offeror's cost or price proposal when that proposal exceeds \$500,000.

D. Procurement Management Assistance Reviews in Fiscal Years 1992 and 1993 have rarely made any findings concerning cost or price analysis at the offices reviewed. Most reports have stated that cost and price analysis was being performed well, and well documented, by contracting officers for actions under \$500,000, and that contracting officers are qualified to perform cost and price analysis.

II. Determination

A. Based upon the above findings, I hereby determine that contracting officers should be given greater authority to perform cost and price analyses on offeror's cost or price proposals without the support of appropriate pricing support personnel. Such greater authority will reduce the number of contract actions which must be reviewed by pricing support personnel, yet will not denigrate the quality of negotiations and awards executed by DOE contracting officers.

B. Therefore, in accordance with the authority vested in me by 48 CFR 901.404, Class deviations, I hereby grant a deviation, on a class basis, to the requirements of 48 CFR 915.805-5 with respect to requiring contracting officers to request appropriate pricing support personnel to review any proposal that exceeds \$500,000.

C. In lieu of this requirement from which the deviation is granted, 48 CFR 915.805-5, Field pricing support, shall be modified at the earliest practicable time to read as follows:


"The DOE contracting officer shall formally request the assistance of appropriate pricing support personnel, other than auditors, for the review of any proposal that exceeds \$5,000,000, unless the contracting officer has sufficient data to determine the reasonableness of the proposed cost or price."

D. 48 CFR 915.805-70, Audit as an aid in proposal analysis, at paragraph (d), shall be revised to provide greater flexibility for contracting officers concerning the requests for audits from cognizant Federal audit agencies. Paragraph (d) shall be revised to read as follows:

"(d) When a contract price will be based on cost or pricing data (FAR 15.804) submitted by the offerors, the DOE contracting officer or authorized representative should consider requesting a review by the cognizant Federal audit activity prior to the negotiation of any contract or modification, including modifications under advertised contracts in excess of:

(1) \$500,000 for a firm fixed price contract or a fixed price contract with economic adjustment provisions; or

(2) \$1,000,000 for all other contract types, including initial prices, estimated costs of cost reimbursement contracts, interim and final price redeterminations, and target and settlement of incentive contracts."


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